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THE CORPORATION TRUST COMPANY AND AFFILIATED COMPANIES

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President.

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The Corporation Journal is published by The Corporation Trust Company monthly, except in July, August, and September. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices (see next page).

When it is desired to preserve The Journal in a permanent file, a special and very convenient form of binder will be furnished at cost ($1.50).

Contents for January

Ad Valorem Tax Systems

EDWARD ROESKEN

There are a number of different systems for the administration of ad valorem or general property taxes in effect in the various states, applicable to real estate, tangible personal property, and, in some instances, to intangibles. The following general distinctions may be noted.

In a large group of states, there is but one assessment of property for state, county and municipal purposes. Payment of the tax due is made to one official, usually a municipal tax collector, who later allocates a portion of the revenue to the state and county governing bodies. This is the simplest form of ad valorem tax system and it is in effect in approximately thirty states. Typical states in this group are Illinois, Massachusetts and New Jersey.

Allied to this group is another of four states in which the same type of system prevails, with the exception that in certain "special charter" cities taxes for city purposes are levied and collected separately from state and county taxes. Such states are Arizona, Iowa, Missouri and Nebraska.

In a third group of eight states, the state and county taxes are assessed and collected through county officials at times uniform throughout the counties, while each city is permitted, under its charter, to assess and collect its own taxes separately for ad valorem purposes. Maryland, New York and West Virginia are to be found in this classification.

In Kentucky and Pennsylvania, the separation of state and county taxes on one hand, from city taxes on the other, is distinguished by a classification of cities in groups, with special statutory provisions containing uniform requirements relating to each group of cities.

In three states, cities are permitted either to effect their own assessment systems, apart from the combined state and county assessment, or, at their option, the cities may adopt, as their own, the values reached by county officials in determining assessments for state and county purposes. Such states are Alabama, California and Texas.

Through these varied methods, the municipalities and counties receive the bulk of the revenue required for their maintenance. The revenue a state receives from such local property taxes is usually small, separate state taxes ordinarily being levied for the support of a state government's activities through franchise taxes, income taxes, sales taxes, gross income taxes and similar levies.

Domestic Corporations

Delaware.

In the case of *Keller et al. v. Wilson & Co., Inc.*, before the Delaware Supreme Court, arguments on the motion for reargument were presented on November 30 and December 14.

New York.

Attempt by charter amendment to reclassify non-callable preferred stock so as to make it callable at a stated amount at the option of the corporation, held to violate stockholder's vested interest in corporation; section 36 (g) of Stock Corporation Law construed. This was a representative action in which plaintiff preferred stockholder sought a permanent injunction restraining defendants from consummating a plan to amend her corporation's charter so far as it provided for the non-callable preferred stock to be reclassified so as to make it callable at $105 per share at the option of the company. Having quoted section 36(g) of the Stock Corporation Law, permitting a corporation "to classify or reclassify any shares," the New York Supreme Court, Appellate Division, Second Judicial Department, said: "The first question to be determined is: does the statute authorize the proposed change in the corporation's present capital structure? It will be observed the above subdivision does not specifically authorize existing non-callable stock to be reclassified so as to make it callable. It is argued, however, that, as section 36 authorizes many changes with respect to 'shares, capital stock or capital,' it may be assumed the Legislature intended to permit a change making non-callable stock callable by a vote of two-thirds of the outstanding shares. We think not. The statute is comprehensive in scope, and the failure expressly to provide that existing permanent stock may be converted into callable stock indicates no such authority was granted or contemplated. To classify or reclassify shares means to arrange them in groups and to designate them as common, preferred, first preferred, second preferred, etc. Making non-callable stock callable is neither classification nor reclassification. It is the creation of a new right in favor of the corporation and results in the destruction of an absolute ownership and the substitution of a defeasible ownership. To hold the Legislature has sanctioned the proposed change, we must give the statute an effect concededly not expressed and, we believe, not implied. While in determining the legislative intent the statute should be read as a whole and each provision construed in connection with the others, nevertheless, in the absence of language clear and positive, we may not hold the Legislature intended to authorize so drastic a change. We therefore conclude, assuming the Legislature had the power, it has not so exercised it to enable two-thirds of the stockholders of the Queens Company to amend its charter so as to make its non-callable preferred stock callable.

"Again, assuming the authority to make the proposed change is implicit in the statute, we believe its exercise would contravene the provisions of the Federal Constitution. Under the State Constitution (Art. VIII, § 1) and the statute (General Corporation Law, § 5), the right to alter or repeal the charter of a corporation is reserved to the Legislature. It is well settled any change or alteration the Legislature might make by direct act may be made by delegating to the corporation, or a majority or some other percentage of its stockholders, the power to do so. The history of the reserved power is generally understood. Suffice it to say it was necessary, in view of the holding in the noted case of *The Trustees of Dartmouth College v. Woodward* (4 Wheat. 518) that a corporate charter was a contract which the State by legislative enactment was forbidden to change."

After reviewing a number of decisions, including that of *Keller et al. v. Wilson & Co., Inc.,* decided by the Delaware Supreme Court in November, 1936, (The Corporation Journal, December, 1936, page 270), the court continued: "While it does not appear in the record, it is undisputed that the Queens Company was incorporated and the preferred stock issued prior (although plaintiff acquired her shares subsequently) to the enactment of the statute which defendants invoke. What is the nature and character of plaintiff's interest as the present holder of non-callable preferred stock? Is it a vested interest which may not be divested without plaintiff's assent, or a defeasible interest subject to extinguishment by the holders of record of two-thirds of the outstanding shares? We believe it is a vested property right inherent in her ownership, by virtue of which she received a fixed right in the division of the profits and earnings of the Queens Company 'so long as it exists, and of its effects when it is dissolved.' It has been said that such a right 'is as inviolable as is any right in property, and can no more be taken away or lessened, against the will of the owner than can any other right.'" The court also remarked: "Generally, when it is proposed to exchange new stock for old, a dissenting stockholder has the right to accept the new stock and remain a stockholder or retire and receive the value of his stock. Plaintiff has no such choice. She must get out of the corporation. The majority has so decreed. The statute does not vest the majority with any such power. To hold it does is to hold the majority enjoys a right tantamount to the sovereign right of eminent domain. Defendants are attempting, under the guise of classification or reclassification of the preferred stock, to impair the obligation of plaintiff's contract with the corporation and to divest plaintiff of her present vested and permanent interest in the corporation. This we hold the statute does not authorize, and if it does it is unconstitutional." "The remedy of appraisal under section 38, which the learned Special Term said was available to plaintiff, applies only if the amendment alters the preferential rights of outstanding shares. As heretofore indicated, the proposed amendment does not alter any preferential right running with the shares but destroys a vested property right. Defendants

admit the remedy of appraisal is not an adequate or even an available remedy if the proposed change is not authorized." Plaintiff's motion for an injunction was therefore granted. *Florence Ullman Breslav, suing as a stockholder of New York and Queens Electric Light and Power Company, etc. v. New York and Queens Electric Light and Power Company et al.*, New York Supreme Court, Appellate Division, Second Judicial Department, December 4, 1936. Commerce Clearing House Court Decisions Reporting Service Requisition No. 167819.

Oklahoma.

Corporate seal required to be affixed to contract of corporation to sell real property where specific performance of contract is sought. By Section 9695, O. S. 1931, as amended, the corporate seal was required to be attached to "every deed or other instrument affecting real estate, executed by a corporation," except when executed by an attorney in fact, attested by its secretary, assistant secretary or clerk. Plaintiff sues for specific performance on the part of defendant to sell certain land under a contract to sell which bore no corporate seal of defendant corporation. A deed for the property, which had been placed in escrow, was also without a seal. The Oklahoma Supreme Court affirms a judgment for defendant, holding the statute applicable, as the contract was an instrument "affecting real estate." The fact that the corporation did not have a seal was held not to affect this holding, the court remarking: "It is also alleged in the petition that the corporation did not have a seal, and hence could not attach or impress such seal to the contract, and it is contended that by reason of this fact the seal is not required. Some states have a statute to that effect, but we do not. It is therefore manifestly not within our power to provide such legislative exception to the plain terms of the statute, and there would be no better reason for our holding the instrument valid merely because the corporation did not have a seal than there would be for our holding an individual's unsigned contract to convey real estate valid because he did not have a pen." *Downing v. Young Men's Christian Ass'n. et al.*, Oklahoma Supreme Court, October 13, 1936. Commerce Clearing House Court Decisions Reporting Service Requisition No. 165065.

Ontario.

Mailing of dividend warrant to stockholder at his registered address in accordance with by-law prescribing such method of payment held to constitute a legal payment of the dividend. This was an action by plaintiff stockholder in defendant company to recover the amount represented by three dividends declared by defendant, in connection with which checks had been sent by mail to plaintiff's address as registered with the company, the checks having been made to the order of the plaintiff. A trusted employe of

plaintiff had forged plaintiff's signature on the dividend checks and deposited them in his personal bank account without the knowledge of the stockholder. The Ontario Supreme Court, after noting that the dividends had been properly posted, directed to the stockholder, in accordance with the defendant's by-laws, and that this action was one for a debt due—the non-payment of the dividends—concluded that the only obligation on the company was to pay by means of a dividend warrant, and that, having sent such warrants, the obligation of the company was discharged. The effect of the by-law prescribing the method of payment of the dividends constituted a contract between each of the shareholders and the company. As the by-law had been fully complied with by the defendant company, there was a legal payment of the dividends by the defendant. Recovery was therefore denied. *Rands v. Hiram Walker, G. & W. Ltd.*, (1936) 4 D. L. R. 186. J. H. Rodd, K. C., and F. K. Jasperson, for plaintiff. S. L. Springsteen, K. C., and J. McKeon, for defendant.

Foreign Corporations

Arkansas.

Mere collection of debt within state by a foreign corporation does not constitute doing business. Appellee, a foreign corporation not authorized to do business in Arkansas, brought this action to foreclose a mortgage which had been sold and assigned to it by an Oklahoma corporation, the assignment being executed in the State of Oklahoma and delivered to appellee at its home office in Vermont. The Arkansas Supreme Court, in ruling that appellee may maintain this action, over appellant's contention that the suit should be dismissed because it was brought by a foreign corporation which had not complied with the laws of Arkansas, said: "It does not appear from this record that appellee is doing business in this State. The fact that it bought a note and mortgage from the American Investment Company of Oklahoma, which mortgage covers property in Arkansas, is not sufficient to show that it is doing business in this State. Nor is the fact that it comes into the State to collect its debt sufficient to constitute the doing of business in this State. Linton v. Erie-Ozark Mining Company, 147 Ark. 331, 227 S. W. 411; L. D. Powell Company v. Rountree, 157 Ark. 121, 247 S. W. 389, Sturdivant v. Ka-Dene Medicine Company, 169 Ark. 535, 275 S. W. 921. The transaction between the American Investment Company and appellee, whereby the note and mortgage were assigned to the latter, was an interstate transaction and as the Supreme Court of the United States said in the case of Faust v. Brewster, 282 U. S. 493: 'Accordingly, when a corporation goes into a State other than that of its origin to collect, according to the usual or prevailing methods, the amount which has become due in transactions in interstate commerce, the State cannot, consistently with the limitation arising from the commerce clause, obstruct the attainment of that

purpose.'" *Moran v. Union Savings Bank & Trust Company,** Arkansas Supreme Court, October 19, 1936. Commerce Clearing House Court Decisions Reporting Service Requisition No. 165136.

*The pertinent text of this opinion is printed in **The Corporation Tax Service, Arkansas volume, page 507.**

New Jersey.

Foreign corporation furnishing radio programs to subsidiary corporation which broadcast programs from station within state, held not doing business in New Jersey. In an action to recover damages by reason of alleged defamation in a radio program prepared under the direction of defendant Columbia Broadcasting System, Inc., a New York corporation, but broadcast through a New Jersey station owned by the Atlantic Broadcasting Corporation, service of process was made upon the former corporation, the latter not being a party defendant. In setting the service of process aside as illegal and void, the Supreme Court of New Jersey said: "The testimony indicates that the usual method of making 'station' and 'system' or 'network' announcements is used. At certain times, announcement has been made identifying station WABC as 'station WABC of the Atlantic Broadcasting Corporation owned and operated by Columbia Broadcasting System.' Station WABC is owned by the Atlantic Broadcasting Corporation. The license is held by it. It is not lawful, without such a license, to use or operate any apparatus. Even if the Columbia Broadcasting System, Inc., owned the Atlantic Broadcasting Corporation, this would not constitute the doing of business in New Jersey, since the operation of station WABC at Wayne, Passaic county, was by another corporation and any act of the Columbia Broadcasting System was done in the state of New York. The mere use by station WABC of the energy transmitted from New York would be an independent act of Atlantic Broadcasting Corporation, because but for its independent act nothing would transpire in this state.

"Undoubtedly, the Atlantic Broadcasting Corporation may be viewed as a subsidiary of the Columbia Broadcasting System. But the circumstance that the Atlantic Broadcasting System does engage in business in New Jersey does not bring the Columbia Broadcasting Corporation, Inc., within the jurisdiction of this court." *Hoffman v. Carter et al.,** 187 A. 576. Green & Green and Harry Green of Newark, for plaintiff. Pitney, Hardin & Skinner of Newark, for defendants.

*The full text of this opinion is printed in **The Corporation Tax Service, New Jersey volume, page 506.**

New York.

Foreign newspaper corporation with solicitor in state held not doing business so as to be subject to service of process. This action, originally instituted in the New York Supreme Court, was removed

to the United States District Court, Eastern District of New York on the ground of diversity of citizenship, defendant being a New Jersey corporation. Service of process had been made upon an agent of defendant, its New York "local representative," at his office in New York City. Defendant appears specially and seeks to have service of process set aside. The agent, with an office in New York City, solicited orders which were forwarded to the home office of the company for approval and execution. His authority was limited. He was neither a director nor an officer; he had nothing to do with the purchase of materials such as are used in the publication of a paper; nothing to do with contracts relating to machinery or with any other equipment; nothing to do with the editorial policy; nothing to do with the gathering of news or the publication thereof; and nothing to do with contracts in respect to any policy of the newspaper. Under these facts the court granted a motion to set aside the service of process. *Lauricella et al. v. Evening News Publishing Company,** 15 F. Supp. 671. Matt Goldstein of New York City, for plaintiffs. Davis, Polk, Wardwell, Gardiner & Reed (William C. Cannon, Francis W. Phillips and Frederick G. Watson, Jr., of counsel) of New York City, for defendant.

* The full text of this opinion is printed in **The Corporation Tax Service**, New York volume, page 211.

Oklahoma.

Foreign parent company, not doing business in state, does not become subject to jurisdiction because of subsidiaries' presence there, provided separate corporate entities are formally maintained. In a suit on appeal to the United States Circuit Court of Appeals, Tenth Circuit, from the District Court of the United States for the Northern District of Oklahoma, stockholders of certain subsidiary companies, as stockholders and not in their derivative right, instituted suit against the parent holding corporation, a New York company with no office, business, property or agent in Oklahoma, service having been made upon a director of the New York corporation. The court holds that no jurisdiction was acquired over the parent company, remarking that: "It is well settled by the decisions of the (United States) Supreme Court, that a foreign corporation, not itself engaged in business within the District in which suit is instituted against it, is not 'present' therein because a subsidiary is doing business therein, so long as there is a real, even though it be a formal, separation between parent and subsidiary." It is also held that the venue was improperly laid in the Northern District of Oklahoma, Section 51 of the Judicial Code not being applicable, since jurisdiction in the case was not based solely on diversity of citizenship and all the plaintiffs did not reside in the district where suit was instituted, and, further, that Section 57 of the Code could not be invoked, as the properties concerning which recovery was sought were located partly outside the state of Oklahoma. *Wilhelm et al. v. Consolidated Oil Corporation et al.*, 84 F. (2d) 739. Lewis J. Bicking

of Tulsa, (C. R. Nixon and Guy Wilson, of Tulsa, and Amidon, Hart, Porter & Hook of Wichita, Kansas, on the brief), for appellants. Frederick H. Wood of New York City, (Summers Hardy, N. A. Gibson, and J. H. Maxey, of Tulsa, and G. T. Stanford, Harold F. McGuire and R. W. Ragland, of New York City, on the brief), for appellees.*

*The full text of this opinion is printed in **The Corporation Tax Service**, Oklahoma volume, page 522.

Taxation

Louisiana.

Franchise tax is applicable to subsidiaries of insurance companies; indebtedness which is assumed is "borrowed capital" for purpose of franchise tax. Defendant corporation, when sued for failure to pay a corporate franchise tax, answered that it was exempt from the payment of the tax because all of its capital stock was owned by an insurance company which was not subject to the provisions of Act No. 8 of 1932, as amended, imposing the corporate franchise tax. Defendant claimed there was discrimination under the statute because, while it exempted "corporations all the capital stock of which (except directors' qualifying shares, if any) is owned by any bank, banking company, banking firm, banking association or banking corporation," it did not exempt subsidiaries of insurance companies even though it exempted their parent companies. The Supreme Court of Louisiana held defendant must be regarded as taxable, since the act did not exempt it. With regard to the allegation of discrimination, the court observed: "It is clear that the Legislature intended to and did classify corporations to subserve the purpose of the act, which was to raise revenues for the state. It is clear also that, because certain classes of corporations are exempted from the tax, there is a discrimination in their favor as against those which do not enjoy the exemption. But merely because that is true it does not follow necessarily that the act is invalid. The Legislature may, in its discretion, designate certain classes of persons, firms and corporations to be taxed, and exempt others. The mere fact of a classification or discrimination does not necessarily render the act void. The test is whether the classification or discrimination is based upon some reasonable ground." "It is only when the classification is unreasonable or capricious that the statute is void." "The Legislature did not, without reason, single out subsidiaries of banking corporations as objects of favoritism. The subsidiaries of banking corporations, the capital stock of which is owned entirely by banking corporations, are nothing more nor less than agencies or instrumentalities of the parent corporations, organized to further the ends of the banking business in which the parent is engaged. While they are separate corporate entities from the parent corporations, they are nevertheless, in theory and in practice, mere banking agencies engaged in some branch of the business which banks are

authorized to pursue, so that the exemption of the subsidiaries of banking corporations from the payment of this tax is but an exemption of the banks themselves." The validity of the tax imposed upon the defendant was therefore upheld.

Defendant, which had outstanding capital stock of $10,000, also contended that the imposition of the franchise tax, based on "borrowed capital in excess of the capital stock, surplus and undivided profits," should not be applied to an indebtedness represented by its note and mortgage for $1,500,000, claiming this amount was not literally "borrowed." This amount represented the cost of a building it had erected, the mortgage and note having been given in that connection. The court held the claim without merit, saying: "The capital invested by the defendant in its business is the price of the building, and it matters not whether that capital was obtained by assuming the indebtedness or whether it was literally borrowed and put into the business. The result is the same. To hold otherwise would thwart the purpose of the act. It would permit a ten thousand dollar corporation to do a million dollar business by paying a license tax based on the capital stock alone, a subterfuge pure and simple." The excess of this borrowed capital over the corporation's capital stock, surplus and undivided profits was therefore held taxable. *State v. Union Building Corporation*,* 170 So. 7. Anna Judge Veters of New Orleans, for appellant. D. M. Ellison, P. H. Stern and Charles J. Rivet, Sp. Assts. to Atty. General, for the State. **Appeal to the United States Supreme Court filed November 11, 1936; Docket No. 516. Motion of appellee to dismiss the appeal granted and the appeal dismissed for want of a substantial Federal question, December 7, 1936.**

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* The full text of this opinion is printed in **The Corporation Tax Service, Louisiana volume, page 1526.**

Missouri.

Franchise tax held applicable to corporation engaged principally in interstate commerce but which carried on activities in state subsequent to cessation of interstate movement of property. Respondent Delaware pipe line corporation, engaged in the shipment of gasoline and similar products by pipe line from points outside Missouri to a Missouri terminal, resisted the state franchise tax, imposed upon "every corporation not organized under the laws of this state, and engaged in business in this state" by Section 4641, R. S. Mo. 1929. Respondent was held subject to the tax, the facts disclosing certain blending operations on its part in connection with the products shipped, upon their receipt in Missouri, the court saying: "We are unable to find support in this record for the conclusion that the blending operations and the storage of the finished products were a part of the transportation as necessary incidents thereto. The undisputed facts show that the interstate movement ceased when the gasoline was delivered to the consignee at the Jefferson City

terminal prior to the blending operation and that the blending and storage of the finished product constituted the transaction of intrastate business." *State v. Phillips Pipe Line Co.*, 97 S. W. (2d) 109. Roy McKittrick, Atty. General, and Harry G. Waltner, Jr., and George B. Strother, Asst. Attys. General, for the State. R. H. Hudson of Bartlesville, Okla., H. H. Booth of Kansas City, Stockard & Stockard of Jefferson City, and H. P. Robinson and Hilary D. Mahin of Bartlesville, Okla., for respondent. Neale & Newman of Springfield, amicus curiae.

New York.

The Stock Transfer Tax law as amended in 1933 is held constitutional as applied to the transfer of par value shares. Sections 270 and 270-a of the Tax Law, as recast by amendment of Chapter 643, Laws of 1933, each provided for the imposition of a tax upon all deliveries or transfers of shares or certificates of stock at a flat rate of one and one-half cents for each share, "except in cases where the shares or certificates are sold for twenty dollars or more per share, in which case the tax shall be at the rate of two cents for each and every share." The Court of Appeals observed: "Thus the Legislature has said that the computation of the tax shall in all cases be based on the number of shares transferred. Is a tax on par shares, so fixed, constitutional?" After tracing the history of the stock transfer tax legislation and the results of litigation when the tax had been before the courts, the 1933 act was held not to be unconstitutional because it taxes transfers of par stock without regard for the true value of the shares. Continuing, the court said: "The appellants also make the point that it is an irrational division which fixes a higher rate for one of the two sales price levels at which the tax is laid. We think the rate is reasonably adjusted to the value of the privilege and to ability to pay." *Vaughan and Co. v. State*,* New York Court of Appeals, November 24, 1936. Commerce Clearing House Court Decisions Reporting Service Requisition No. 167227.

*The full text of this opinion is printed in **The Corporation Tax Service**, New York, page 4503.

Pennsylvania.

Dwelling houses owned by a manufacturing company, occupied by its employees, held not exclusively employed in manufacturing for purpose of the capital stock tax. Where a chemical manufacturing company took over a group of houses erected by one of its officers for the convenience of its employees, as housing facilities were not available for them when defendant's plant was erected, the buildings being rented to the employees and, when available, to others than employees, it was held that, for the purpose of the capital stock tax, such property was not "capital invested in and actually and exclusively employed in manufacturing" so as to be

excluded from the basis of the capital stock tax of the company under the provisions exempting capital employed in manufacturing. *Commonwealth of Pennsylvania v. Keasbey & Mattison Co.*,* Dauphin County Court of Common Pleas, September 14, 1936.

* The full text of this opinion is printed in **The Corporation Tax Service**, Pennsylvania volume, page 237-20.

South Dakota.

Chain Store Tax law held invalid. In reviewing Chapter 204, Laws of 1935, providing for taxes upon chain stores, consisting of a flat rate tax based upon the number of stores and, in addition, a tax based upon gross sales, graduated as to retail stores, as it passed through the Legislature, the South Dakota Supreme Court found that "the house journal clearly indicates that the bill did not receive the requisite majority and did not pass that branch of the legislature." Section 2, Article 12 of the State Constitution requires "a two-thirds vote of all the members of each branch of the legislature" in connection with bills containing appropriations. The bill in question contained such an appropriation. "The clear trend of decisions," remarked the court, "is in support of the view that an enrolled bill duly authenticated, approved by the governor, and filed with the proper officer may be impeached by the legislative journals on the ground that it has not received a constitutional majority of the members elected to each house when the constitution requires the yeas and nays to be entered." The act, having failed to receive a sufficient approval in the house, it was held void in its entirety. *Barnsdall Refining Corporation et al. v. Welsh et al.** South Dakota Supreme Court, November 16, 1936. Commerce Clearing House Court Decisions Reporting Service Requisition No. 166636.

* The full text of this opinion is printed in **The Corporation Tax Service**, South Dakota volume, page 568.

Appealed to The Supreme Court

The following cases previously digested in The Corporation Journal have been appealed to The Supreme Court of the United States.*

LOUISIANA. Docket No. 516. *Union Building Corporation v. E. A. Conway, Secretary of State of Louisiana,* 170 So. 7. (The Corporation Journal, January, 1937, page 302.) Involves validity of franchise tax as applied to a subsidiary of an insurance company. **Appeal filed November 11, 1936. Motion of appellee to dismiss the appeal granted, and the appeal dismissed for want of a substantial Federal question, December 7, 1936.**

VIRGINIA. Docket No. 40. *The Atlantic Refining Company v. Commonwealth of Virginia,* 183 S. E. 243. (The Corporation Journal, March 1936, page 136.) Validity of foreign corporation entrance fee. **Appeal filed April 24, 1936. Jurisdiction postponed to hearing of case on its merits, May 18, 1936. Argument concluded October 22, 1936.**

WASHINGTON. Docket No. 418. *Henneford et al. v. Silas Mason Co., Inc. et al.,* U. S. District Court, Eastern District of Washington, August 3, 1936; 15 F. Supp. 958. (The Corporation Journal, November, 1936, page 258.) Involves validity of State of Washington "Compensating Tax." **Appeal filed September 30, 1936; probable jurisdiction noted October 19, 1936. Motion to advance argument submitted by counsel for appellants, October 26, 1936. Motion granted and case advanced for argument on Monday, December 14, 1936. Argument commenced for appellants, December 14, 1936.**

*** Data compiled from CCH U. S. Supreme Court Service, 1936-1937.**

Regulations and Rulings

ALABAMA—The Attorney General of Alabama has ruled that the deed filing tax applies to a deed running from trustees appointed in Federal Court proceedings for a corporate reorganization. (Full text of the opinion is printed in the Alabama CT Service, page 7613.)

KANSAS—Article 89 of the Income Tax Regulations, covering returns of information at the source, has recently been amended so as to increase to $1500 the limit above which information with respect to married persons is required to be reported. The limit formerly was $750. (The article as amended is shown in the Kansas CT Service, page 267-27.)

LOUISIANA—The Supervisor of Public Accounts has been advised by the Attorney General of Louisiana that "when an order from without the State is received by a retail dealer within the State, and in a continuous transaction the sale is completed by shipping the tangible personal property so ordered without the State in interstate commerce, the sale of said personal property is so related to the interstate transaction that it is not subject to the (Luxury Sales) tax levied by Act 75 of 1936." (The full text of this and other opinions relating to the sales tax will be found printed in the Louisiana CT Service, pages 6301 and 6302.)

MISSISSIPPI—The defeat of the proposed amendment to Section 112 of the Mississippi Constitution on November 3, 1936, the Attorney General of Mississippi has ruled, in no way affects, amends or modifies Chapter 155, Laws 1936, which requires sales taxes to be passed on to the purchaser. (Full text of the opinion is printed in the Mississippi CT Service, page 7564.)

NEW MEXICO—An unqualified foreign corporation which maintains salesmen in New Mexico, and through them solicits orders from New Mexico customers, is engaged in interstate commerce and is not subject to the New Mexico income tax. Such is the holding of the Attorney General of New Mexico, reported in the CT Service for that State, page 279-18.

NEW YORK—The State Tax Commission has ruled that where stock in consolidating corporations is surrendered in exchange for stock in the resulting corporation, no stock transfer tax is due. (Ruling printed in the New York CT Service, page 4501.)

Where a corporation in reorganization under Section 77-b of the Bankruptcy Act, transfers stock of other corporations to the reorganized corporation, and where it transfers the stock of the new corporation to its creditors pursuant to court order, the Tax Commission has held that the transfers are not by operation of law, but voluntary, and are subject to the stock transfer tax. (Full text of ruling is printed in the New York CT Service, page 4502.)

Some Important Matters for January and February

This Calendar does not purport to be a *complete* calendar of all matters requiring attention by corporations in any given state. It is a condensed calendar of the more important requirements covered by the *State Report and Tax Notification Service* of The Corporation Trust Company. Attorneys interested in being furnished with timely and complete information regarding *all* state requirements in any one or more states, including information regarding forms, practices and rulings, may obtain details of the Service from any office of The Corporation Trust Company.

ALABAMA—Annual Application for Permit to do Business due on or before February 1.—Domestic and Foreign Corporations.

ALASKA—Annual Report due within 60 days from January 1.—Domestic and Foreign Corporations.

ARKANSAS—Franchise Tax Report due on or before March 1.—Domestic and Foreign Corporations.

CALIFORNIA—Quarterly Retail Sales Tax Return and Payment due on or before January 15.—Domestic and Foreign Corporations.

Return of Information at the Source and Return of Tax withheld at source due on or before February 15.—Domestic and Foreign Corporations.

CONNECTICUT—Annual Report due on or before February 15 (if corporation was organized or qualified between January 1 and June 30).—Domestic and Foreign Corporations.

DELAWARE—Annual Report due on or before first Tuesday in January.—Domestic Corporations.

DISTRICT OF COLUMBIA—Annual Report due between January 1 and January 20.—Domestic Corporation.

DOMINION OF CANADA—Return of Information at the source due on or before February 28.—Domestic and Foreign Corporations.

ILLINOIS—Annual Report due between January 15 and February 28.—Domestic and Foreign Corporations.

INDIANA—Quarterly Gross Income Tax Return and Payment due on or before January 15.—Domestic and Foreign Corporations.

Annual Report and License Fee of foreign finance companies due February 1.—Foreign Corporations engaged in the business of financing sales.

Return of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

IOWA—Quarterly Retail Sales Tax Return and Payment due on or before January 20.—Domestic and Foreign Corporations.

KANSAS—Return of Information at the source due on or before March 1.—Domestic and Foreign Corporations.

KENTUCKY—Annual Report due on or before February 1.—Domestic and Foreign Corporations.

LOUISIANA—Annual Report due on or before February 1.—Domestic Corporations.

Capital Stock Statement due on or before March 1.—Foreign Corporations.

MAINE—Annual License Fee due on or before March 1.—Foreign Corporations.

MASSACHUSETTS—Return of Information at the source due on or before March 1.—Domestic and Foreign Corporations.

MINNESOTA—Annual Report due between January 1 and April 1.—Foreign Corporations.

MISSOURI—Return of Information at the source due on or before March 1.—Domestic and Foreign Corporations.

Annual Franchise Tax Report due on or before March 1.—Domestic and Foreign Corporations.

MONTANA—Annual Report of Capital employed due between January 1 and March 1.—Foreign Corporations qualified after February 27, 1915.

Annual Return of Net Income due on or before March 1.—Domestic and Foreign Corporations.

Annual Report due on or before March 1.—Domestic and Foreign Corporations.

NEW JERSEY—Annual Franchise Tax Return due on or before the first Tuesday in February.—Domestic Corporations.

NEW YORK—Annual Franchise Tax Report of Real Estate and Holding Corporations due between January 1 and March 1.—Domestic and Foreign Real Estate and Holding Corporations. Forms 41 C. T. and 42 C. T., Art. 9 of the Tax Law.

Return of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

NORTH DAKOTA—Quarterly Retail Sales Tax Return and Payment due on or before January 20.—Domestic and Foreign Corporations.

OHIO—Report to Department of Industrial Relations due during January.—Domestic and Foreign Corporations employing three or more persons in Ohio.

Retail Sales Tax Information Report due on or before January 31.—Domestic and Foreign Corporations.

OKLAHOMA—Return of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

OREGON—Return of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

RHODE ISLAND—Annual Report due during February.—Domestic and Foreign Corporations.

Corporation Tax Return due on or before March 1.—Domestic and Foreign Corporations.

SOUTH CAROLINA—Annual Statement due on or before January 31.—Foreign Corporations.

Annual License Tax Report due during February.—Domestic and Foreign Corporations.

SOUTH DAKOTA—Annual Capital Stock Report due before March 1.—Foreign Corporations.

TENNESSEE—Annual Privilege (Franchise) Tax Report due on or before March 1.—Domestic and Foreign Corporations.

UNITED STATES—Return of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

UTAH—Return of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

VERMONT—List of Stockholders due on or before January 31.—Domestic and Foreign Corporations.

Return of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

Annual Report due on or before March 1.—Domestic Corporations.

Annual License Tax Return and Payment due on or before March 1.—Domestic and Foreign Corporations.

VIRGINIA—Annual Registration Fee due on or before March 1.—Domestic and Foreign Corporations.

Annual Franchise Tax due on or before March 1.—Domestic Corporations.

WEST VIRGINIA—Quarterly Gross Sales Tax Return and Payment due on or before January 30.—Domestic and Foreign Corporations.

Return of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

The Corporation Trust Company's Supplementary Literature

In connection with its various activities The Corporation Trust Company publishes the following supplemental pamphlets and forms, any of which will be sent without charge to readers of The Journal. Address The Corporation Trust Company, 120 Broadway, New York, N. Y.

A Corporation's Achilles Heel. Containing the complete text of the opinion of the Supreme Court of the United States in State of Washington ex rel. Bond & Goodwin & Tucker, Inc. v. Superior Court, State of Washington, and of the Supreme Court of New Mexico in Silva v. Crombie & Co. —two decisions of great significance to attorneys of corporations qualified in one or more states.

Delaware Corporations. Presents in convenient form a digest of the Delaware corporation law, its advantages, for business corporations, the attractive provisions for non par value stock, and a brief summary of the statutory requirements, procedure and costs of incorporation, completely revised to reflect the changes made by the amendments of 1935.

New Deal Laws of Importance to Corporations. Contains complete text of Securities Act of 1933 as amended by Title II of the Securities Exchange Act of 1934, all matters in the original act omitted in the 1934 amendments being set in brackets, and all new matters added by the 1934 amendments being set in italics; complete text of the Securities Exchange Act of 1934; and complete text of the amendments approved June 7, 1934 to the Bankruptcy Act providing for corporate reorganizations.

The New Bankruptcy Law. Contains, first, the eleven-word amendment approved June 18, 1934 to the original amendment to the Bankruptcy Act approved June 7, 1934 (and published in our pamphlet New Deal Laws described above); second, two examples of voluntary petitions for reorganization under the new provisions; and third, two examples of petitions under the new provisions for appointment of trustees (reorganization sought).

The High Cost of Whistles for Corporations. Benjamin Franklin's classic, "The Whistle," here is shown, by the decisions in actual court cases, to have a very pointed application to some of the policies of some business corporations of our own day. A sixteen-page pamphlet for both laymen and lawyers.

Special Report. The Case Against Corporate Representation by Business Employes. Specific experiences of different corporations with the handling by untrained corporate representatives of such matters as service of process, notices of taxes due, filing of corporation reports, etc.

What Constitutes Doing Business. (Revised to April 15, 1934.) A 198-page book containing brief digests of decisions selected from those in the various states, as indicating what is construed in each state as "doing business." The digests are arranged by state, but a Table of Cases and a Topical Index makes them accessible also by either case name or topic. There is also a section containing citations to cases on the question of doing business such as to make the company subject to service of process in the state.

Amateur Corporate Representation. A booklet dealing with some of the weaknesses of placing a company's statutory representation in the hands of business employes or others not trained in the matters involved.

When Corporations Cross the Line. A simple explanation of the reasons for and purposes of the foreign corporation laws of the various states, and illustrations of when and how a corporation makes itself amenable to them. Of interest both to attorneys and to corporation officials.

Questionnaire on Business Outside State of Organization. This is a Form for attorney's use in determining when a corporation should be qualified. The questions are those which will usually bring out the points necessary to be considered.